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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.NO.17010 OF 2010

AND M.P.NO.1 OF 2010

M/s.India Pistons Limited,  
Plot No.1-413-16,  
Sengundram,  
Melrosapuram, Singaperumal Koil Post,  
Kancheepuram District - 603 204.

... Petitioner

Vs.

1. The Superintending Engineer,  
Chengalpattu Electricity Distribution Circle,  
Chengalpattu.
2. The Deputy Financial Controller,  
Chengalpattu Electricity Distribution Circle,  
Chengalpattu.

... Respondents

PRAYER:

The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents with respect to the bill for the month of June 2010 dated 12<sup>th</sup> July 2010 pertaining to HT A/c 305 belonging to the petitioner and quash the same insofar as it relates to the illegal penalty of Rs.14,69,343.81 levied by the respondents and allow the petitioner for subsequent months to utilize the entire third party power purchase through intra-State Open Access System procured by the petitioner above and beyond the demand and energy quota determined on the basis of base demand and energy less the 20% power cut at present.

For Petitioner : M/s.Krishna Srinivasan

For Respondents : M/s.L.Jai Venkatesh  
Standing Counsel



## O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents with respect to the bill for the month of June 2010 dated 12<sup>th</sup> July 2010 pertaining to HT A/c 305 belonging to the petitioner and quash the same insofar as it relates to the illegal penalty of Rs.14,69,343.81 levied by the respondents and allow the petitioner for subsequent months to utilize the entire third party power purchase through intra-State Open Access System procured by the petitioner above and beyond the demand and energy quota determined on the basis of base demand and energy less the 20% power cut.

2. The respondents TANGEDCO could not supply the power sanctioned to the petitioner as there was a shortage in power supply. Therefore, the petitioner purchased the power from third parties. When the TANGEDCO raised a bill, it imposed 20% power cut not only for the power supplied by the TANGEDCO, but also for the power purchased from third parties.

3. The issue was challenged before the Appellate Tribunal for Electricity with regard to imposition of 20% power cut on the power purchased from the third parties. The Appellate Tribunal for Electricity in Appeal No.36 of 2012, dated 31.10.2012, has set aside the imposition of 20% power cut on the power purchased from the third parties and held that it shall be treated as additionality. The relevant portion of the judgment is extracted as follows:-

### 51. Summary of Our Findings:-

(i) The quota for use of power from TNEB after imposition of restriction and control measures has been fixed based on the consumption of consumers for the period October 2007 to October 2008 when there was no restriction and control over use of electricity. The third party purchase through open access was not available to the Appellants during that period. The third party purchase of power through Intra-State open access was introduced after 1.11.2008 for consumers with connected load of 1 MV and above. Subsequently, TNEB permitted third party purchase by memos dated 30.12.2008 and 17.07.2009 respectively for consumers with connected load upto 500 KW and 250 KW. The third party power purchase by the consumers could not be deducted from the base demand/energy computed on the basis of the



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actual consumption for past period to fix the TNEB's quota of supply as third party purchase was meant to bridge the gap between the consumers' sanctioned demand and TNEB's quota and should be treated as on additionality. TNEB's proposed power cut could not be imposed on the power procured by the consumer from third party purchase through open access.

(ii) TNEB issued two memos dated 30.12.2008 and 17.7.2009 permitting to go upto the sanctioned demand by third party purchase to HT consumers with connected load upto 500 KW and 250 KW respectively. In the memo dated 17.7.2009 issued by the Chairman, TNEB it has been specifically stated that the purchaser can use the purchased power over and above the original quota fixed for him under restriction and control take a contrary stand to its own memos dated 30.12.2008 and 17.7.2009.

(iii) In the order dated 7.9.2010, the State Commission after taking note of the memo dated 17.7.2009 from Chairman, TNEB directed the TNEB to act in accordance with its own stand. Thus, the State Commission has erred in deciding the date of effect of its order to 17.8.2010.

(iv) The procurement of power through open access from third party is protected under the Electricity Act, 2003 and the State Commission could not restrict the operation of its order effective from 17.8.2010 as the same has to be made effective from the date when third party purchase through open access was permitted by the Electricity Board.

(v) The date of effect of the order for third party purchase should not have been mixed up with the advance declaration by wind energy generators as they are two distinct issues."

4. Considering the above position, this Court has already disposed of several matters in line with the judgment passed by the Appellate Tribunal for Electricity. Therefore, this Court is also inclined to follow the same and accordingly, the impugned order dated 12.07.2010 in respect of HT A/c 305 belonging to the petitioner is set aside. Liberty is granted to the TANGEDCO to work out the bill in line with the judgment of the Appellate Tribunal for Electricity in Appeal No.36 of 2012, dated 31.10.2012.



The Writ Petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer,  
Chengalpattu Electricity Distribution Circle,  
Chengalpattu.
2. The Deputy Financial Controller,  
Chengalpattu Electricity Distribution Circle,  
Chengalpattu.

W.P.No.17010 of 2010  
and M.P.No.1 of 2010

GPL (CO)  
PM/09/03/2022